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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BEFORE THE**

**Federal Communications Commission**

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In the Matter of: :

Docket Number: 92-41

AMORY, MISSISSIPPI :

-----X

DATE: June 24, 1992

VOLUME: 1

PLACE: Washington, D.C.

PAGES: 1 - 12

**Capital Hill Reporting**

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

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In the matter of: : Docket Number 92-41

AMORY, MISSISSIPPI :

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The above-entitled matter came on for  
Conference, pursuant to Notice before Walter C. Miller,  
Administrative Law Judge, at 2000 L Street N.W.,  
Washington, D.C., in Courtroom Number 1, on Wednesday,  
June 24, 1992, at 8:30 a.m.

APPEARANCES:

On behalf of the Chief, Mass Media Bureau:

JAMES SHOOK

Federal Communications Commission

2025 M Street N.W.

Washington, D.C. 20554

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## P R O C E E D I N G S

(Time Noted: 8:30 a.m.)

JUDGE MILLER: On the record.

This is the date for the prehearing conference in the Amory, Mississippi AM revocation proceeding, MM Docket 92-41.

We're here today so that you can exchange the written documents you intend to rely on, along with the list of the witnesses you intend to present in support of your direct case and we'll otherwise firm this case up for hearing.

Before we begin, let's take some appearances. For the Wayne C. Murphy?

(No response.)

JUDGE MILLER: Let the record show there was no response.

For the Chief, Mass Media Bureau?

MR. SHOOK: James Shook.

JUDGE MILLER: All right. A prehearing order was released in this case back on April 1st, 1992; that's FCC 92M-414. What we'll do is we'll use that as our agenda and if there's anything we don't cover that way that you think we ought to cover, feel free to bring it up either at the end of the session or whenever we reach the appropriate paragraph in the

1 prehearing order.

2 Prehearing order, Paragraph 2, the licensee  
3 was to submit a written appearance on or before April  
4 27th, 1992. My records show that he did.

5 Counsel filed a notice of appearance for the  
6 licensee. The firm was Gardner, Carton & Douglas. But  
7 later, on June 3rd, 1992, counsel withdrew.

8 In their withdrawal notice, counsel indicated  
9 that Wayne Murphy was proceeding, at that time, pro se.

10 On June 8th, 1992, FCC 92M-648, the Trial  
11 Judge alerted Wayne Murphy to his future trial  
12 obligations, including this conference.

13 Paragraph 3 of the prehearing order is the  
14 Bill of Particulars. My records show that the Mass  
15 Media Bureau served that Bill of Particulars on Wayne  
16 Murphy on April 22nd, 1992. Is that correct, Mr.  
17 Shook?

18 MR. SHOOK: That's what our records reflect  
19 also, your Honor.

20 JUDGE MILLER: So that's been taken care of.

21 Paragraph 4 deals with the discovery end of  
22 this case. My records show that you served, the Bureau  
23 served a request for admissions on Mr. Murphy on May  
24 7th, 1992 and that Murphy responded on May 27th, 1992.

25 Now, although you have under the terms of the

1 prehearing order, Mr. Shook, you have until July 8th to  
2 complete discovery, are you in a position to tell me  
3 whether you've completed your discovery?

4 MR. SHOOK: Your Honor, we anticipate no  
5 further discovery.

6 JUDGE MILLER: All right. My records show  
7 that Mr. Murphy conducted no discovery, is that  
8 correct?

9 MR. SHOOK: We're aware of none, your Honor.

10 JUDGE MILLER: All right.

11 Paragraphs 5 through 7 of the prehearing  
12 order deal with exchanging exhibits and witness lists.

13 Are you prepared to exchange your written  
14 exhibits today, Mr. Shook?

15 MR. SHOOK: Your Honor, I have written  
16 exhibits and I have a witness list.

17 JUDGE MILLER: All right. Do they comply  
18 with Paragraphs 5 through 7 of the prehearing order?

19 MR. SHOOK: I believe they do, your Honor.

20 JUDGE MILLER: Are the written exhibits  
21 accompanied by a sponsoring witness' affidavits where  
22 they are needed?

23 MR. SHOOK: Your Honor, I believe these  
24 exhibits do not require a sponsoring witness.

25 JUDGE MILLER: All right. Keeping two copies

1 to give to the Court Reporter at the upcoming  
2 evidentiary admission session, if there is one, proceed  
3 with your exchange.

4 You cannot -- as you know, you cannot give  
5 two copies to Mr. Murphy, who is not here, but you can  
6 at least give two copies to the Presiding Officer and I  
7 think it might be wise if you took advantage of that  
8 mailing address that Gardner, Carton & Douglas and send  
9 him two copies. I mean send him a copy of your list  
10 and the exhibits, okay?

11 MR. SHOOK: Your Honor, I'll send him a copy  
12 today.

13 JUDGE MILLER: All right.

14 All right, the exchange has been made. I  
15 guess I only need one copy.

16 MR. SHOOK: That's fine, your Honor.

17 (Whereupon, a woman entered the Courtroom and  
18 handed a telegram to Judge Miller.)

19 JUDGE MILLER: I have received a telegram,  
20 Mr. Shook. I think we better read this into the  
21 record. It's addressed to me as Administrative Law  
22 Judge, Federal Communications Commission, urgent,  
23 delivery by 8:15 a.m. on June 24th and deliver it to  
24 2000 L Street, Room 213.

25 And it reads: "In the matter re: WDAT Docket

1 MM 92-41 prehearing conference scheduled today,  
2 respectfully request continuation. Inches from  
3 finalizing sale to local minority businessman. Expect  
4 transfer under minority distress sale policy. Please,  
5 Wayne C. Murphy, Licensee."

6 Unfortunately, we already started with the  
7 conference and we're going to complete the conference.  
8 I will arrange to send the man a message, but I think  
9 we ought to mention two, at least from the Bench's  
10 view, two items and then if you have anything that you  
11 want to add about this message, you can, Mr. Shook.

12 They had indicated once before that they were  
13 very close to a distress sale and that's back when they  
14 had counsel and they indicated that they thought they  
15 might be able to -- in fact I think it's in writing  
16 somewhere -- and I have indicated that ordinarily I'm  
17 very receptive to a minority distress sale.

18 It's Commission policy and I try to follow it  
19 and I have, but I am not that interested in this  
20 proceeding in a distress sale implementation and I'll  
21 put on the record why.

22 Amory, Mississippi, the facility in question  
23 is a 500 watt daytime only facility in an area that is  
24 economically hurting. I'm aware of that from a  
25 previous case that I had down in Ripley and Calhoun.

1 The 500 watt daytime station in Amory would be  
2 competing against two other existing broadcasters.

3 Each of those two other existing broadcasters  
4 have both an AM and an FM, so that the competition for  
5 advertising revenues is loaded heavily against whoever  
6 that licensee, the license of that 500 watt daytime  
7 only would be and I think it would be doing an  
8 injustice to some unsuspecting minority to sell him  
9 such a facility.

10 As a consequence, I can't display the empathy  
11 to this telegram that I might under different  
12 circumstances.

13 Mr. Shook?

14 MR. SHOOK: Your Honor, should Mr. Murphy and  
15 this unknown perspective buyer actually submit a  
16 distress sale application, we would thoroughly review  
17 it at that time. Until such an application is actually  
18 submitted, we have no way of knowing, you know, how  
19 this should play out.

20 For all we know, Mr. Murphy may be selling  
21 this station for an absolute song to this person and  
22 this person may have reasons other than economic gain  
23 for actually wanting to purchase it.

24 So insofar as whether it may meet the  
25 distress sale requirements, we simply have to wait to



1 see what's submitted.

2 JUDGE MILLER: Well, in past cases, I have  
3 required the licensee who wanted to go the distress  
4 sale route to file a pleading with me saying yes, we  
5 are going to implement and not be inches away from  
6 finalizing.

7 I mean, we are going to implement the  
8 distress sale policy. The Bureau gets a chance to  
9 comment on that and I generally then put the hearing  
10 off for 90 days.

11 MR. SHOOK: This may be something your Honor  
12 may wish to consider then in an order, you know,  
13 following this conference so Mr. Murphy is alerted  
14 exactly to what your Honor wants.

15 JUDGE MILLER: Well, I alerted Gardner,  
16 Carton & Douglas and told them. I said now, if you  
17 want to go distress sale, you know how to do it.

18 MR. SHOOK: We have no way of knowing how  
19 well or how poorly they may have communicated with Mr.  
20 Murphy.

21 JUDGE MILLER: I know, I am aware of that.  
22 But in any event, Mr. Murphy's position as set out in  
23 the Western Union telegram, has been placed on this  
24 record and I will get some sort of communication to him  
25 that we are proceeding and we intend to continue to

1 proceed.

2 MR. SHOOK: With respect to that, your Honor,  
3 I would request that the dates that you have  
4 established will be maintained, absent a firm proposal  
5 that meet's your Honor's requirements.

6 JUDGE MILLER: That's correct, that's  
7 correct.

8 In fact, Paragraph 8 of the prehearing order  
9 sets up the evidentiary admission session for July 2nd,  
10 1992 at 8:30 a.m. and only you, since you're the only  
11 one that's exchanged exhibits, will formally identify  
12 and offer these materials into evidence and it's up to  
13 Mr. Murphy, if he has any objections or if he wants to  
14 dispute anything that's in those two exhibits, he  
15 should be here and do so and I'm going to let him know  
16 that.

17 And, at the conclusion of that evidentiary  
18 admission session, I'll also point out to him that he's  
19 been called as a witness, an adverse witness, by the  
20 Bureau and it will be up to him to be here.

21 And I'll also point out to him in a  
22 communication that if he is serious about the distress  
23 sale policy, he better follow proper procedures and let  
24 you people know.

25 Paragraph 9 of the prehearing order deals

1 with the hearing date. The hearing date is July 27th,  
2 1992 and will remain that, unless and until we get a  
3 proper pleading before us that we believe is a sincere  
4 effort to go the distress sale route.

5 It may be that -- in the event that we do not  
6 go to hearing in this case, we are still faced with  
7 another problem. Assuming Mr. Murphy's license is  
8 revoked or he turns it in or whatever and it goes back  
9 to the processing line for an analysis to open up for  
10 other people to apply for it, I would be perfectly  
11 willing, although I know this is not directly connected  
12 with this case, be perfectly willing to recommend to  
13 the processing line that they do one of two things.

14 One, conduct an engineering investigation to  
15 find out if this could be used full time and with more  
16 than 500 watts power, so that what we end up opening up  
17 as something that may have a chance of making it  
18 financially.

19 Or and at least to my knowledge they've never  
20 done this, conduct an investigation to find out if  
21 there's an available FM channel you can put in Amory  
22 and then offer it both an FM and an AM, so that the  
23 person who got it was getting -- yes, he's getting a  
24 daytime only AM, but he's also getting a full time FM  
25 and therefore, could be competitive with the other

1 stations. Whoever gets it, would be competitive with  
2 the other stations that are located there.

3 Now, that to my knowledge, has not been done,  
4 but I think with a little ingenuity they wouldn't have  
5 any problem doing it if they wanted to.

6 MR. SHOOK: Who knows in this area, your  
7 Honor, a little creativity may go a long way.

8 JUDGE MILLER: Well, especially when we have  
9 a daytime only problem on our hands.

10 In the event that Mr. Murphy does not, A, get  
11 the train stopped by the time of the evidentiary  
12 admission session and doesn't show up to contest your  
13 induction of exhibits, I may call on you to file a  
14 motion for summary decision, rather than wait for the  
15 July 27th hearing, if there is nothing really to be  
16 heard.

17 And if I do that, I'll probably be asking you  
18 to file sometime in early to mid July, so that we can  
19 get the days running and give him a chance to respond  
20 and get this case off the books if we need to.

21 MR. SHOOK: I anticipated as much. I think  
22 the rules would ask for or require that such a motion  
23 generally be filed no less than 20 days before the  
24 start of the hearing.

25 JUDGE MILLER: Right.

1 MR. SHOOK: So I anticipated a relatively  
2 short turnaround between the admission session and the  
3 filing of such a motion.

4 JUDGE MILLER: Right. Now, the admission  
5 session is July 2nd, isn't it?

6 MR. SHOOK: Yes, sir.

7 JUDGE MILLER: I mean it's not an earth  
8 shaking arduous task to prepare this motion for summary  
9 decision in the event it continues along the lines it  
10 has.

11 MR. SHOOK: I hope not.

12 JUDGE MILLER: Well, a lot of it will just be  
13 repeating what you have already exchanged today.

14 Well, with that is there anything further we  
15 need to take up today, Mr. Shook?

16 MR. SHOOK: Your Honor, nothing.

17 JUDGE MILLER: Okay, then we stand adjourned  
18 until July 2nd, 1992 when we will hold the evidentiary  
19 admission session.

20 MR. SHOOK: Thank you, your Honor.

21 (Whereupon, at 8:50 o'clock a.m., the  
22 conference in the above entitled matter was concluded.)

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C E R T I F I C A T E

This is to certify that the attached proceedings  
before the FEDERAL COMMUNICATIONS COMMISSION

in the matter of: AMORY, MISSISSIPPI

Docket Number: 92-41

Place: Washington, D.C.

Date: June 24, 1992

were held as herein appears, and that this is a true  
and accurate record of the proceedings.

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BY



EDNA SEGAL-  
Official Reporter